

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

CIVIL ACTION NO.: CV210-122

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.
2011 JUL 11 AM 8:29
CLERK *A. Kay*
SO. DIST. OF GA.

HOWARD HALEY,

Plaintiff,

vs.

~~ANTHONY HAYNES, Et. Al.,~~

Defendants.

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OBJECTION TO MAGISTRATE JUDGE REPORT AND RECOMMENDATION

1. The Magistrate Report and Recommendation("R & R") in the above styled proceeding, recommending that Plaintiff's complaint be dismiss for failure to exhaust must be rejected.

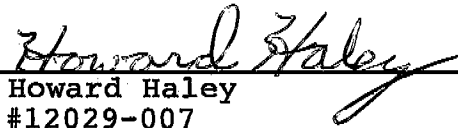
2. The R & R notes that Plaintiff satisfied the Bureau of Prisons' exhaustion requirements. However, posits that Plaintiff failed to file an appeal as required by 28 C.F.R. §39.103.

3. While its evident that Plaintiff did not comply with this procedure. The R & R makes no analysis as to whether the doctrine of "detrimental reliance" would be applicable under the circumstances sub judice. Its crystal clear that the Bureau of Prisons("BOP") handbook merely advise Plaintiff of the procedures needed to be exhausted before going to Court. At no time does the procedure direct Plaintiff that he is required to take an appeal or administrative complaint.

4. To be clear, when an inmate files a BP-9 s/he is advised that they have 20 days in which to take an appeal to the Regional Office. Upon submission to the Regional Office if denied s/he is again advised that they have 30 days in which to petition Central Office(BP-11). Similarly, when s/he files a Tort Claim against the BOP, upon denial s/he is again advised that they have six(6) months to seek relief in a United States District Court. As is indicative above, upon completion of the Administrative process(BP-11) no indication is given that further exhaustion is required. Defendants' having failed to provide Plaintiff with adequate notice cannot be allowed to prevail. Plaintiff relied on Defendants' to his detriment.

5. The R & R also failed to conduct any analysis as to whether Defendants' waived any "exhaustion" defense when they failed to plead same in their original response.

6. The R & R concludes that Plaintiff have no liberty interest in a work assignment in prison and that courts' that have analyzed such a claim have so held. However, the R & R makes no analysis as to whether Plaintiff who is a District of Columbia prisoner have a liberty interest in work assignments and/or good time conduct under such assignment as a District of Columbia prisoner.


Howard Haley
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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on July 2, 2011, I, personally caused to be served upon counsel for the Defendants' a true and correct copy of the foregoing instrument.


Howard Haley